IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

WP(C).No. 29531 of 2007(N)
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against the order in I.A.1681 AND 1682/06 IN AS.31/2006 of SUB COURT, PALA
OS.26/2002 of MUNSIFF COURT, PALA
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PETITIONER/2ND RESPONDENT IN A.S.31/06:

SHAJI,S/O. RAGAHAVAN, KURUMACKAL HOUSE
VILAKKUMADAM KARA, POOVARANY VILLAG PALA,
KOTTAYAM DISTRICT.

BY ADV. SRI.BOBY MATHEW
SMT.K.MEERA

RESPONDENTS: RESPONDENT AND APPELLANTS 1 TO 4 & 6 TO 12 IN AS 31/06:
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1. SUKUMARAN
S/O. KOCHU KUNJU, KURUMACKAL HOUSE
URULIKUNNAM KARA, ELIKKULAM VILLAGE
KANJIRAPALLY TALUK,KOTTAYAM DISTRICT.

2. PARUKUTTY
W/O. RAGHAVAN,KURUMACKAL HOUSE
VILAKKUMADAM KARA, POOVARANY VILLAGE,
PALA,KOTTAYAM DISTRICT.

3. THANKAMANI,
W/O. APPU, CHITTEPPARAMBIL HOUSE,
VECHOOR KARA, VECHOOR VILLAGE, VAIKOM TALUK,
VAIKOM , KOTTAYAM DISTRICT.

4. RAMANI
D/O. RAGHAVAN, KURUMACKAL HOUSE,
VILAKKUMADAM KARA, POOVARANY VILLAGE
PALA, KOTTAYAM DISTRICT.

5. SUJATHA
D/O.RAGHAVAN,KURUMACKAL HOUSE,
VILAKKUMADAM KARA, POOVARANY VILLAGE
PALA, KOTTAYAM DISTRICT.

6. SABU
S/O.RAGHAVAN,KURUMACKAL HOUSE,
VILAKKUMADAM KARA, POOVARANY VILLAGE
PALA, KOTTAYAM DISTRICT.

7. SHALAN
S/O.RAGHAVAN,KURUMACKAL HOUSE,
VILAKKUMADAM KARA, POOVARANY VILLAGE
PALA, KOTTAYAM DISTRICT.

8. SUBHADRA,
D/O.RAGHAVAN,KURUMACKAL HOUSE,
VILAKKUMADAM KARA, POOVARANY VILLAGE
PALA, KOTTAYAM DISTRICT.

9. GAYATHRI
D/O.RAGHAVAN,KURUMACKAL HOUSE,
VILAKKUMADAM KARA, POOVARANY VILLAGE
PALA, KOTTAYAM DISTRICT.

10. KAUSALYA
D/O.RAGHAVAN,KURUMACKAL HOUSE,
VILAKKUMADAM KARA, POOVARANY VILLAGE
PALA, KOTTAYAM DISTRICT.

11. RENUKA
D/O.RAGHAVAN,KURUMACKAL HOUSE,
VILAKKUMADAM KARA, POOVARANY VILLAGE
PALA, KOTTAYAM DISTRICT.

12. SATHYAVATHI
D/O.RAGHAVAN,KURUMACKAL HOUSE,
VILAKKUMADAM KARA, POOVARANY VILLAGE
PALA, KOTTAYAM DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 29531 OF 2007

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Dated this the 5th day of October, 2007.

J U D G M E N T

This writ petition is filed against the order of the Subordinate Judge, Pala whereby the prayer made by the appellants in A.S.31/06 for the issuance of a Commission had been rejected. The suit is one for partition and the Court below had granted a decree in favour of the plaintiff. The suit was resisted on the basis that the right over the plaint schedule property had been relinquished by the plaintiff whereby he had taken one acre and 38 cents and also Rs.4 lakhs and an agreement has been entered into and therefore it has to be deemed that he has relinquished right over the present plaint schedule property. A perusal of the judgment of the Court below would reveal that an attempt was made to produce and mark the document which was a photocopy which was objected to and that was not marked. So everything revolves or centres round that point. Admittedly, the said case is on the basis of the document. So unless it is

before Court there is no point in issuing a Commission for the purpose of noting the particulars stated by the party. If the writ petitioner is able to highlight the point at the time of hearing of the appeal and there are circumstances under which the Court can have a re-look at the matter the appellate court is free to do so. But at this point of time I do not find any mistake committed by the appellate court in dismissing the application for issuance of a Commission. With these observations, the writ petition is disposed of.

M.N. KRISHNAN, JUDGE.

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